

STATE OF MICHIGAN
COURT OF APPEALS

RIMA TRAKHTENBERG,

Plaintiff-Appellant,

v

JACOB TRAKHTENBERG,

Defendant-Appellee.

UNPUBLISHED

July 31, 1998

No. 200835

Oakland Circuit Court

LC No. 94-482811 DM

Before: Holbrook, Jr., P.J., and White and J.W. Fitzgerald,* JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce entered by the trial court. We reverse and remand to the trial court for further proceedings.

Plaintiff and defendant met in Israel, while defendant was there visiting family. Because plaintiff was unable to obtain an American visa to enter the United States at that time, she emigrated to Canada to be with defendant. The parties were married on October 24, 1991, in Windsor, and while residing there, plaintiff became pregnant. Defendant brought plaintiff into the United States a month later and their son, Hessel, was born on August 6, 1992. The marriage began to deteriorate shortly thereafter, and plaintiff filed for divorce on August 31, 1994.

On appeal, plaintiff first argues that the trial court erred in determining the proper division of the marital assets. Specifically, plaintiff challenges the court's finding that she was not entitled to any portion of the appreciation value of the marital home that accrued during the course of the marriage. In denying plaintiff any of home's appreciation value, the court reasoned that she had been given the opportunity to remain in the United States, raise her child, and "live the American dream," which was equivalent in value to her share of the appreciation of the home. The trial court essentially determined that because the marriage was brief, and was more accurately the product of a business agreement rather than love and concern, and because plaintiff and her family received some funds from defendant during the marriage, that plaintiff was not entitled to any share of this marital asset.

* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

This Court reviews the trial court's findings of fact regarding the division of property de novo, and will not reverse those findings unless they are clearly erroneous. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1989). If this Court upholds the trial court's factual findings, it must then decide whether the dispositive ruling was fair and equitable in light of those facts. *Sands v Sands*, 442 Mich 30, 32; 497 NW2d 493 (1993). The dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Id.*

In granting a divorce, a trial court may divide all assets that were acquired by either spouse by reason of the marriage. MCL 552.19; MSA 25.99; *Reeves v Reeves*, 226 Mich App 490, 493; 575 NW2d 1 (1997). Factors that the court should consider in reaching an equitable division are the duration of the marriage, the contribution of each party to the marital estate, each party's station in life, each party's earning capacity, each party's age, health and needs, fault or past misconduct contributing to the marital breakdown, and any other equitable circumstance. *McDougal v McDougal*, 451 Mich 80, 89; 545 NW2d 357 (1996); *Sparks v Sparks*, 440 Mich 141, 158-160; 485 NW2d 893 (1992). When apportioning the marital estate, the court must strive toward an equitable division of any increase in net worth that may have occurred during the marriage. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). "The sharing and maintenance of a marital home affords both spouses an interest in any increase in its value (whether by equity payments or appreciation) over the term of a marriage. Such amount is clearly part of the marital estate." *Reeves, supra* at 495-496.

We find that while the trial court properly determined that the appreciation value of the marital home was a marital asset subject to division, the court, nonetheless, erred in denying plaintiff her portion of that value. We cannot accept the trial court's reasoning that plaintiff should be required to forfeit her right to a marital asset in exchange for the opportunity to live in the United States, see her child, and "live the American dream." While plaintiff's share of the asset may properly be set off by the other amounts that defendant expended on plaintiff's behalf, the trial court erred in altogether denying plaintiff's right to this asset on this basis.

In addition, we find that the trial court's ruling failed to consider the fact that, while plaintiff may not have contributed financially to the appreciation of the residence, her efforts at maintaining the home, cooking and cleaning for defendant, and caring for their child, constituted a valuable contribution to the marriage and to the value of the home. See *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995). Accordingly, we remand to the trial court for an equitable determination of the value of appreciation in the marital home during the marriage to which plaintiff is entitled.

Plaintiff also argues on appeal that the trial court's awards of spousal support and attorney fees were insufficient. Because the trial court's decision on remand regarding the issue of asset distribution will likely affect the issues of spousal support and attorney fees, we further direct the trial court to reevaluate these issues in light of that determination. On remand, the court should consider up-to-date information and any changes in circumstances arising during the appeal process, including, for example, the parties' employment status. Accord *Fletcher v Fletcher*, 447 Mich 871, 889; 526 NW2d 889 (1994). While the trial court shall have discretion to decide the manner in which the remand proceedings are to be conducted, the court must state its findings of fact and conclusions of law on the record and, accordingly, enter an amended judgment of divorce.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.

/s/ John W. Fitzgerald